IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 15.6.2005

C O R A M

The Honourable Mr. MARKANDEY KATJU, Chief Justice
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

Writ Petition No.16836 of 2003

Plydham .. Petitioner

Versus

1. The Registrar,
   Tamil Nadu Taxation Special Tribunal,
   Rajaji Salai, Chennai-1.

2. The Appellate Assistant
   Commissioner-CT III,
   Kuralagam Annexe, Chennai-102.

3. Deputy Commercial Tax Officer,
   Vepery Assessment Circle,
   3, Ritherdon Avenue, Chennai-7. .. Respondents

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Prayer : Petition filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus calling for the records on the file of the first respondent in O.P. No.1102/2002 dated 20.3.2003, quash the same and direct the first respondent to hear the original petition.

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For Petitioner : Mr. A. Thiyagarajan
For Respondents : Mr. T. Ayyasamy,
Spl. Govt. Pleader
(for R-2 & R-3)

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Order of the Court delivered by
The Honourable The Chief Justice

This writ petition has been filed challenging the impugned order dated 20.3.2003 passed by the first respondent in O.P. No.1102 of 2002.

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2. It appears that an assessment order was passed against the petitioner by the third respondent, the Deputy Commercial Tax Officer, Chennai, against which a first appeal was preferred by the petitioner to the second respondent, the Appellate Assistant Commissioner-CT III, Kuralagam, Chennai-102. The second respondent rejected the first appeal by his order dated 17.1.2002.

3. Thereafter, at the relevant time, the assessee had two options, either to file a second appeal before the Appellate Tribunal under Section 36 of the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Act) or to file a revision before the Special Tribunal under Section 38-A of the Act. The petitioner opted for the second alternative, viz. filing a revision before the Tamil Nadu Taxation Special Tribunal under Section 38-A of the Act. By the impugned order, the Special Tribunal dismissed the revision on the ground that there was no limitation prescribed by the statute. It was, however, made clear that as and when the legislature prescribed a period of limitation, the revision could be entertained.

4. Evidently, the Special Tribunal rejected the petitioner's revision relying on the first proviso to Section 38-A of the Act, which states -

> "Provided that every application to the Special Tribunal for the exercise of the powers under this Section shall be preferred within such period as may be prescribed".

5. The Special Tribunal was evidently of the view that since no period of limitation was prescribed, the revision was not maintainable under Section 38-A of the Act. We do not agree. If no period of limitation was prescribed, then obviously the first proviso does not come into operation at all and hence, the revision under Section 38-A of the Act could be filed at any time and it was certainly maintainable. Hence, the revision should not have been dismissed on the ground that just because no limitation under the first proviso had been prescribed, a revision was not maintainable. In our opinion, the view taken by the Special Tribunal is not correct and hence, the impugned order is quashed.

6. However, the question now remains as to what is to be done since we are informed that the Special Tribunal is not functioning now in view of the passing of Act 34 of 2004, though the same has not been notified. We are informed that the Special Tribunal is non-functional and hence, the matter cannot now obviously go back to the Special Tribunal.

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7. The petitioner had a right of appeal under Section 36 of the Act and therefore, in the peculiar circumstances of this case, we direct that if such an appeal is filed by the petitioner within one month from today, the same shall be entertained without raising any objection as to limitation and shall be decided expeditiously thereafter. However, we make it clear that the petitioner will have to comply with the conditions of pre-deposit as laid down in Section 36 of the Act as existed in the relevant assessment year and then only his appeal will be heard by the Tribunal.

8. With this observation, the writ petition is disposed of. However, there will be no order as to costs. Consequently, W.P.M.P. No.21051 of 2003 is closed.

ab

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Registrar,
   Tamil Nadu Taxation Special Tribunal,
   Rajaji Salai, Chennai-1.

2. The Appellate Assistant Commissioner-CT III,
   Kuralagam Annexe, Chennai-102.

3. The Deputy Commercial Tax Officer,
   Vepery Assessment Circle,
   3, Ritherdon Avenue, Chennai-7.

+ 1 cc to Mr.A.Thiagarajan, Advocate SR No.24038

+ 1 cc to Spl Government Pleader (Taxes) SR No.240645

MAB(CO)
SR/17.6.2005 W.P. No.16836 of 2003

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